DEPARTMENT OF COMMERCE

International Trade Administration

[C–433–806]

Final Affirmative Countervailing Duty Determination: Certain Oil Country Tubular Goods (''OCTG'') From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

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Final Determination

The Department of Commerce (''the Department'') determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters in Austria of certain oil country tubular goods (''OCTG''). For information on the estimated net subsidy, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of the preliminary determination in the **Federal Register** (60 FR 4600, January 24, 1995), the following events have occurred. On February 2, 1995, pursuant to a request by Voest-Alpine Stahlrohr Kindberg (''Kindberg''), the Department postponed the final determination in the companion antidumping investigation (60 FR 6512) until not later than June 19, 1995. Because this investigation is aligned with the companion antidumping investigation, we notified parties that the final determination in this investigation would also be made no later than June 19, 1995.

We conducted verification of the responses submitted by the Government of Austria (''GOA'') and Voest-Alpine Stahlrohr Kindberg (''Kindberg'') from February 27 through March 8, 1994. Both respondents and petitioners submitted case and rebuttal briefs on May 23 and May 30, 1995, respectively. A hearing was not requested.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (''Proposed Regulations''), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Injury Test

Because Austria is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') must determine whether imports of OCTG from Austria materially injure, or threaten material injury to, a U.S. industry. On August 24, 1994, the ITC published its preliminarily determination that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reasons of imports from Austria of the subject merchandise (59 FR 43591, August 24, 1994).

Corporate History of Respondent Kindberg

Prior to 1987, the subject merchandise was produced in the steel division of Voest-Alpine AG (''VAAG''), a large conglomerate which also had engineering and finished products divisions. In 1987, VAAG underwent a major restructuring and several new companies were formed from the three major divisions of VAAG. The steel division was incorporated as Voest-Alpine Stahl GmbH, Linz (''VA Linz''). Among VA Linz's separately incorporated subsidiaries were Kindberg and Voest-Alpine Stahl Donawitz GmbH (''Donawitz''). VAAG became a holding company for VA Linz and its other former divisions.

In 1988, VAAG transferred its ownership interest in VA Linz to Voest-Alpine Stahl AG (''VAS''). At the same time, Kindberg became a subsidiary of Donawitz. Donawitz and other companies were owned by VAS, which in turn was owned by VAAG.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung GmbH (''IBVG''). In 1990, IBVG, in turn, was renamed Austrian Industries AG (''AI''). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

In 1991, as part of the reorganization of the long products operations, Donawitz was split. The rail division remained with the existing company (*i.e.*, Donawitz), however, the name of the company was changed to Voest-Alpine Schienen GmbH (''Schienen''). In addition to producing rails, Schienen also became the holding company for Kindberg and the other Donawitz subsidiaries. The metallurgical division of the former Donawitz was incorporated as a new company and was

named Voest-Alpine Stahl Donawitz (''Donawitz II'').

Equityworthiness

As discussed below, we have determined that the GOA provided equity infusions, through the state-owned industry holding company, Österreichische Industrieholding-Aktiengesellschaft (''ÖIAG''), to VAAG in the years 1983, 1984, and 1986, and to Kindberg in 1987. In order for the Department to find an equity infusion countervailable, it must be determined that the infusion is provided on terms inconsistent with commercial considerations. Petitioners have alleged that VAAG and Kindberg were unequityworthy in the years in which they received equity infusions and that the equity infusions were, therefore, inconsistent with commercial considerations. According to § 355.44(e)(2) of the Department's *Proposed Regulations*, for a company to be equityworthy it must show the ability to generate a reasonable rate of return within a reasonable period of time. A detailed equityworthiness analysis can be found in the Department's Concurrence Memorandum dated June 19, 1995. A summary of that analysis follows.

In the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993) (''Certain Steel''), the Department found VAAG to be unequityworthy in the years 1978–84 and 1986. Respondents have not questioned this determination and no additional information concerning that period has come to light. Therefore, we determine VAAG to be unequityworthy during the period 1978–84, and for 1986.

With respect to the equityworthiness of Kindberg in 1987, we have further examined the information provided regarding Kindberg's future prospects. This information included a more detailed excerpt of the VA Neu study than was available at the time of the preliminary determination, ÖIAG Finance Concepts, and an internal operating forecast performed by Kindberg. Although the forecasts show a trend toward profitability, they fail to establish that Kindberg would generate a reasonable rate of return in a reasonable period of time. Therefore, we determine that the 1987 equity infusion into Kindberg was inconsistent with commercial considerations. We also reaffirm our preliminary determination, based on our analysis from Certain Steel, that VAAG's poor performance prior to the restructuring supports a finding that the 1987 infusion into Kindberg was inconsistent with commercial considerations.

Allocation of Non-Recurring Benefits

We have determined that the subsidies received by Kindberg are ''non-recurring'' because the benefits are exceptional and the recipient could not expect to receive them on an ongoing basis (see, the *General Issues Appendix* to the Final Countervailing Duty Determination: Certain Steel Products from Austria (''GIA''), 58 FR 37225, 37226 (July 9, 1993)). Consequently, as explained in § 355.49 of the *Proposed Regulations*, we have allocated the benefits over a period equal to the average useful life of assets in the industry.

A company-specific discount rate was not available for the allocation. Therefore, we have used the bond rate designated as being for ''Industry and other Austrian Issuers'' in the Austrian National Bank's Annual Report. Although respondents reported an alternative borrowing rate to be used as the discount rate, we verified that their proposed rate reflected large government borrowings. Because we are measuring the benefit to the recipient company, we prefer a commercial benchmark. Therefore, we have rejected the rate dominated by government borrowing and selected instead a rate which reflects what it costs businesses to borrow.

Calculation of the Benefit

For purposes of this final determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Kindberg in the POI by Kindberg's total sales revenue. Next, we added the benefits for all programs to arrive at Kindberg's total subsidy rate. Because Kindberg is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of OCTG under the following programs:

1. Equity Infusions to Voest-Alpine AG (VAAG): 1983, 1984 and 1986

The GOA provided equity infusions through ÖIAG to VAAG in 1983, 1984 and 1986, while VAAG owned the facilities which became Kindberg, the producer of the subject merchandise. The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. The 1986 equity infusion was given as an advance payment for funds to be provided under Law 298/1987 (the ÖIAG Financing Act). Law 589/1983 and Law 298/1987 provide authority for disbursement of funds solely to companies of ÖIAG, of which VAAG is one.

In Certain Steel, the Department determined these equity infusions to be *de jure* specific. Respondents did not provide any information disputing these findings in this proceeding. Moreover, since we have determined that VAAG was unequityworthy in these years, we determine that these infusions were provided to VAAG on terms inconsistent with commercial considerations.

Respondents argue that subsidies received by VAAG prior to the 1987 restructuring are not appropriately attributable to Kindberg. However, we have determined that these subsidies continue to benefit Kindberg's production of OCTG, in accordance with restructuring methodology discussed in the *GIA*, at 37265–8. (See *Comment Two*, below, for a discussion of respondents' comments and the Department's position on this matter.)

To calculate the portion of these subsidies to VAAG which is attributable to Kindberg, we divided Kindberg's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (*i.e.*, pre-restructuring). This ratio best reflects the proportion of VAAG's total 1986 assets that became Kindberg in 1987.

We then applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to Kindberg. To calculate the benefit for the POI, we treated each of the equity amounts as a grant and allocated the benefits over a 15 year period beginning in the years the equity was received by VAAG. Our treatment of equity as grants is discussed in the *GIA*, at 37239. We then divided the benefit by total sales of Kindberg during the POI. On this basis, we determine the net subsidies for these equity infusions to be 1.37 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

2. Grants Provided to VAAG: 1981–86

The GOA provided grants to VAAG through ÖIAG pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In Certain Steel, the Department found grants disbursed under Law 602/1981, Law 589/1983 and Law 298/1987 to be provided specifically to the steel industry and, hence, countervailable (58 FR 37221). Respondents have not challenged the countervailability of these grants in this proceeding.

The grant received in 1981 was less than 0.50 percent of VAAG's sales in that year. Hence, as explained in § 355.44(a) of our *Proposed Regulations* and the *GIA*, at 37217, we have expensed the grant received in 1981 in that year. To calculate the benefit from the other grants, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies under this program to be 3.68 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

3. Assumption of Losses at Restructuring by VAAG on Behalf of Kindberg

In Certain Steel, we determined that, in connection with the 1987 restructuring, VAAG retained all the losses carried forward on its balance sheet and that no losses were assigned to its newly created subsidiaries. VAAG later received funds from the GOA under Law 298/1987 to offset these losses. We found that VAAG's subsidiaries benefitted because VAAG retained these losses when the company was restructured. In the present investigation, petitioners allege that this assumption of losses provided a countervailable subsidy to Kindberg, a subsidiary of VAAG.

In our preliminary determination, respondents argued that the assumption of losses did not provide a benefit to Kindberg because Kindberg could have used such losses to reduce income-tax liabilities in the future. We stated that this argument would be more closely analyzed for our final determination.

At verification, we learned that Austrian Commercial Law and Austrian Tax Law distinguish between two types of losses: tax losses and commercial losses. Kindberg's tax losses *were* carried forward after the restructuring and were used to offset income taxes in future years. The losses which were retained by VAAG and countervailed in Certain Steel, were commercial losses. All commercial losses were retained by VAAG after the restructuring. Hence we conclude that the losses retained by VAAG could not be used to reduce the future tax liabilities of Kindberg.

Respondents now argue that these commercial losses were not generated by Kindberg and, therefore, the assumption of losses by VAAG does not benefit Kindberg. At verification, however, respondents were unable to identify how the losses which remained on VAAG's books were incurred. Moreover, Kindberg's auditor's report states that Kindberg incurred significant commercial losses in 1985 and 1986. Hence, we find no basis for concluding that the losses retained by VAAG should not be attributed in part to Kindberg.

We concluded in Certain Steel that, ''if VAAG had assigned these losses to its new companies, then each of the new companies would have been in a * * * precarious financial position'' (Certain Steel, 37221). Similarly, we determine that the assumption of losses provided a benefit to Kindberg.

To calculate the benefit, we have treated the losses not distributed to Kindberg as a grant received in 1987. Kindberg's share of the losses was determined by reference to its asset value relative to total VAAG assets. To allocate the benefit, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 1.26 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

4. Equity Infusion to Kindberg: 1987

A direct equity infusion from ÖIAG to Kindberg was made on January 1, 1987, pursuant to Law 298/1987. As under Law 589/1983, funds under Law 298/1987 were provided solely to the steel industry. Therefore, we find this infusion to be specific. Moreover, since we have determined that Kindberg was unequityworthy in 1987, this infusion was made on terms inconsistent with commercial considerations. Thus, we determine this infusion to be countervailable.

To calculate the benefit for the POI, we treated the equity amount as a grant and allocated the benefit over 15 years. Because the equity investment was made directly in Kindberg, and because Kindberg was separately incorporated as of that year, the entire benefit has been attributed to Kindberg. The portion allocated to the POI was divided by total sales of Kindberg during the POI to determine the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 5.13 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

B. Programs Determined not to Benefit the Subject Merchandise

We included in our investigation subsidies provided after 1987 to VA Linz, VAAG and VAS based on petitioners' allegation that subsidies to these companies benefitted Kindberg. Based on information provided in the responses and our findings at verification, we determine that no subsidies were being transmitted to Kindberg from its related companies. Therefore, the following programs did not bestow a benefit on Kindberg. For a discussion of the transmittal of subsidies, see the Department's Concurrence Memorandum dated June 19, 1995.

1. 1987 Equity Infusion to VA Linz.
2. Post-Restructuring Equity Infusions to VAAG.
3. Post-Restructuring Grants to VAAG.
4. Post-Restructuring Grants to VAS.

C. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of OCTG in Austria receive benefits in the form of upstream subsidies. Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term ''upstream subsidy'' means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an ''input product'') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, respondents have shown that a competitive benefit does not exist. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the subject merchandise, section 771A(b) directs that:

* * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise

which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The *Proposed Regulations* offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) A world market price for the input product.

In this instance, there is not another supplier in Austria of the input product, steel blooms. However, Kindberg does purchase the input product from an unrelated foreign supplier. Therefore, we have used the prices charged to Kindberg by the foreign supplier as the benchmark world market price.

Because the foreign supplier's prices are delivered, we made an upward adjustment to the domestic supplier's prices to account for the cost of freight between Kindberg and that supplier. Based on our comparison of these delivered prices for identical grades of steel blooms, we found no competitive benefit was bestowed on Kindberg during the POI. Therefore, we determine that Kindberg did not receive an upstream subsidy.

Interested Party Comments

Comment One: Attribution of VAAG subsidies to Kindberg

Respondents argue that in *British Steel plc* v. *United States*, the CIT established that ''a subsidy cannot be provided to a 'productive unit' or 'travel' with it unless the 'productive unit' is itself an artificial person capable of receiving a subsidy.'' Prior to 1987, Kindberg was not a separately incorporated company—Kindberg was not an ''artificial person.'' Therefore, respondents claim that subsidies received by VAAG prior to 1987 could not ''travel'' with Kindberg after the restructuring. Moreover, they argue that the requirements in British Steel also preclude the Department from attributing losses assumed at restructuring by VAAG to Kindberg because only subsidies received directly by Kindberg after its incorporation are countervailable.

Petitioners assert that British Steel is irrelevant to Kindberg because it involved cases where subsidized state-owned companies were privatized. However, in this investigation, the Austrian government still owns 100% of Kindberg (*i.e.*, Kindberg has not been privatized). Petitioners note that two types of corporate restructuring were identified in Certain Steel. Privatizations (*i.e.*, mergers, spin-offs, and acquisitions) were one type of corporate restructuring, while internal corporate restructurings were the other type. The 1987 VAAG restructuring was identified as an internal corporate restructuring. Petitioners note that an internal restructuring does not constitute a sale for purposes of evaluating the extent to which subsidies passed through to a new entity. Therefore, they assert that none of the issues addressed in British Steel are relevant.

DOC Position

Respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. First, British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Further, even if British Steel were a final decision, the issues contained in the opinion which relate to privatization are inapposite in this case. The entire British Steel opinion is premised on an actual privatization of a company, *i.e.*, a sale of all or part of the government's interest. In this case, Kindberg has not been privatized. Although the immediate parent of Kindberg changed through the restructuring, the ultimate equity owner was and remains the GOA. The *British Steel* opinion did not address a situation in which a company was restructured, but there was no sale of the government's interest.

Comment Two: Allocation Time-Period

Respondents argue that allocating benefits from nonrecurring grants and equity infusions over fifteen years, based on the IRS tables, contravenes established judicial precedent, as well as congressional intent. They state that a recent CIT decision (*i.e.*, *British Steel plc* v. *the United States*) held that this allocation methodology, used in *Certain Steel*, was contrary to law. Respondents argue that the Department should employ an allocation methodology which reasonably reflects the relevant commercial and competitive advantages enjoyed by Kindberg. Specifically, the Department should allocate benefits using the 3, 5, and 10-year schedules of depreciation found in Kindberg's balance sheet and statement of profit and loss.

Petitioners claim that the the CIT did not find that the Department's allocation methodology was unlawful *per se*. The court's specific concern was that the Department had not adequately explained how the IRS tables reflected the benefit from subsidies used for purposes other than the purchase of physical assets. The court recognized that, after engaging in an examination of the firms under investigation, the Department might still find that the IRS tables could serve as a proxy for allocating subsidy benefits.

Petitioners argue that Kindberg has not provided sufficient evidence that fifteen years does not reflect the benefit to Kindberg from non-recurring subsidies. Petitioners note that Kindberg did not provide cites for the 3, 5, and 10 year depreciation schedules. Moreover, Kindberg did not explain the relevance of these depreciation schedules, nor did it identify the assets that are subject to the depreciation schedules. Given the lack of contrary evidence in the record, the Department should determine that the 15-year allocation period reasonably represents the benefit to Kindberg from non-recurring subsidies.

DOC Position

As noted previously, respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Furthermore, renewable physical assets are essential to the continuation of a company's productive activity, which in turn affects the commercial and competitive position of a company. Therefore, the Department has determined that the average useful life of renewable physical assests is an appropriate measure of the commercial and competitive benefits from non-recurring subsidies (see, GIA, at 37227).

Comment Three: Assumption of Losses

Respondents argue that the evidence on record does not support the Department's preliminary finding that VAAG's assumption of losses provided a countervailable subsidy to Kindberg. According to respondents, it was determined at verification that the losses which remained on VAAG's books after the restructuring were incurred by other units of Voest-Alpine. Respondents claim that ''absent substantial evidence on the record attributing VAAG's losses to Kindberg,

the Department's final determination should not result in a net subsidy calculation for these fictive benefits.''

According to petitioners, the Department was told at verification that the majority of the losses in question were incurred by divisions other than Kindberg, and that Kindberg's portion would therefore be small. Petitioners note that respondents were unable to document or even to determine the actual amount of the losses which were attributable to Kindberg. Petitioners further argue that, had any of VAAG's losses been allocated to Kindberg, the newly formed company would have required additional capital in order to avoid insolvency. They conclude that at least some of the losses assumed by VAAG may have been incurred by Kindberg and should, therefore, have been allocated to Kindberg. The assumption of those losses provided a countervailable subsidy to Kindberg.

DOC Position

We agree with petitioners. At verification, VAAG officials explained that the amount of VAAG's losses attributable to Kindberg is not determinable. While we did see evidence that substantial losses were incurred by other divisions of VAAG prior to the restructuring, it does not follow that no losses were created by Kindberg. Moreover, an excerpt from Kindberg's 1987 auditor's report notes that Kindberg incurred operating losses in the amounts of AS 781 million in 1985 and AS 289 million in 1986. Thus, the evidence on the record indicates that Kindberg incurred losses prior to 1987.

Comment Four: 1987 Equityworthiness of Kindberg

Respondents assert that the Department should not rely solely on the past financial performance of VAAG in determining whether Kindberg was equityworthy in 1987. The Department's determination should take into consideration Kindberg's expected future performance—as outlined in the VA Neu study, the FGG reports, and Kindberg's operating forecasts. Respondents claim that these sources all predicted profitability within three years of the date of incorporation.

Furthermore, respondents argue that the company's performance both prior to and after its effective incorporation date should be considered. With respect to Kindberg's actual performance, respondents note that as early as the third quarter of 1987, Kindberg's performance showed marked improvement over 1986. Therefore, even before Kindberg's equity infusion was provided, future financial prospects for the firm had improved significantly. Moreover, they state that Kindberg's performance continued to improve during 1988 and 1989 and that by 1990, Kindberg was operating at a profit. They contend that at the time of the equity infusion, a reasonable private investor would have recognized that Kindberg was capable of generating a sizable return on investment in a reasonable amount of time.

Petitioners claim that the Department's stated policy in the *GIA* is to place greater reliance on past indicators than on studies of future expected performance. The starting point of the Department's analysis, therefore, should be a review of VAAG's past performance—which would lead to a finding that Kindberg was unequityworthy in 1987.

With respect to the VA Neu Study, petitioners argue that the information is inadequate to establish whether Kindberg was equityworthy. They argue that the Department cannot properly analyze the study because respondents only submitted excerpts containing general discussions of possible cost savings.

Additionally, petitioners assert that Kindberg's predicted profitability does not establish that the company would generate a reasonable rate of return within a reasonable time—particularly in light of the substantial losses that Kindberg was expected to incur prior to achieving profitability.

Finally, petitioners stress that the Department does not consider the actual performance of the company subsequent to the receipt of an equity infusion. Kindberg's actual performance after 1987 is irrelevant for purposes of an equityworthiness determination because such information would not have been available to a private investor at that time.

DOC Position

We agree with respondents that the Department should not rely solely on the past financial performance of VAAG to determine whether the 1987 equity infusion in Kindberg was consistent with commercial considerations. As stated in the *GIA*, as 37244, in circumstances such as a restructuring it may be appropriate to place greater weight on certain factors (such as future prospects), than others (past performance). Hence, the Department has examined closely the expected results of the restructuring for Kindberg. At the same time, we reaffirm our earlier conclusion as to VAAG's performance.

We also disagree with petitioners that the information provided by respondents regarding future prospects is inadequate. While the VA Neu study by itself might not be sufficient, largely because it was internally generated and because it was undertaken for different purposes, we have not relied solely on that study. In addition, we have relied on the estimates provided in conjunction with the FGG's ''oversight'' activities in the restructuring. Although the FGG is part of the Austrian Finance Ministry, there is no indication that it did not operate independently in its assessments of the restructuring process.

We do, however, agree with petitioners that these forecasts do not provide a basis for concluding that the GOA would receive a reasonable return within a reasonable amount of time. Heavy losses were predicted for the early years and the best year showed only that the company would break even (or possibly return a small profit). Although these estimates showed a trend toward profitability, they also showed a negative net return over the time horizon they covered.

We also agree with petitioners that Kindberg's actual performance after the equity infusion is irrelevant to this determination. Our examination focuses on what the investor could have expected to receive at the time the investment was made.

Comment Five: Amount of the 1987 Equity Infusion

Petitioners argue that the Department should find the total amount of equity received by Kindberg in 1987 (*i.e.*, both the direct infusion from ÖIAG and the initial equity contribution by VAAG) to be a countervailable subsidy.

DOC Position

The equity on Kindberg's opening balance sheet for 1987 was composed of initial start-up capital provided by VAAG, an increase in VAAG's equity position due to a revaluation of the assets contributed by VAAG to Kindberg, and the 1987 equity infusion by ÖIAG. VAAG was later reimbursed by ÖIAG for its initial equity contribution.

In Certain Steel, the Department concluded that VAAG's contributions of equity capital to its newly formed subsidiaries in 1987 did not constitute countervailable equity infusions. Rather, VAAG merely distributed its pre-existing assets and liabilities to its subsidiaries. Because the method used to allocate assets and liabilities to the new subsidiaries was reasonable, the Department found that no countervailable benefit was conferred in this action. The initial equity received by Kindberg was part of that

redistribution of VAAG's assets. Therefore, consistent with Certain Steel, we have found that the assets provided by VAAG to Kindberg are not a subsidy. However, as discussed above, the losses retained by VAAG did give rise to a subsidy to Kindberg.

Comment Six: Bayou Steel Corporation (''BSC'')

Respondents assert that the Department should not countervail the equity infusions and grants received by VAAG in 1983 and 1984 because these funds were used to cover losses incurred by BSC in the United States. Moreover, because BSC was sold in 1986, Kindberg cannot be receiving any benefits from those funds.

Petitioners argue that in Certain Steel, the Department found that the funds in question were provided to cover VAAG's worldwide losses, including those associated with Bayou Steel. Therefore, the subsidies are attributable to all of VAAG, including Kindberg.

DOC Position

We agree with petitioner. In Certain Steel, we determined that these funds were provided to cover VAAG's worldwide losses. Respondents have not provided information that these funds were intended solely to benefit BSC (see GIA, at 37236). With respect to the sale of BSC, we have applied the spin off methodology applied in the Certain Steel cases. A portion of the subsidies received by VAAG would have been allocated to BSC at the time of its sale, but the payment VAAG received for BSC was sufficiently large that all of the subsidies reverted to VAAG. Hence, these subsidies continue to be, in part, attributable to Kindberg.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which were entered or withdrawn from warehouse for consumption, on or after January 24, 1995, the date our preliminary determination was published in the **Federal Register**.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning May 24, 1995, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from January 24 through May 23, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

OCTG

Country-Wide *Ad Valorem Rate:* 11.44 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on OCTG from Austria.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15762 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–810]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3646 or (202) 482–1673, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

Since the amended preliminary determination on March 6, 1995 (60 FR 13119, March 10, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Siderca S.A.I.C. and Siderca Corp. (collectively Siderca). Verification reports were issued in May 1995. On May 10 and 17, 1995, the interested parties submitted case and rebuttal briefs, respectively. On May 18, 1995, a public hearing was held. On May 23, 1995, Siderca submitted a revised sales tape pursuant to the Department's request correcting for minor errors discovered at verification.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well